
CONCISE SUMMARY OF THE CASE

Pursuant to 3rd Cir. LAR 33.3, counsel are required to file a concise summary of the case within **14** days of the date of docketing of the Notice of Appeal. Total statement is limited to no more than 2 pages, single-spaced. Counsel may utilize this form or attach a 2 page statement encompassing the information required by this form.

SHORT
CAPTION: **Mid-Atlantic Restaurant Group v. NLRB**

USCA NO.: **16-4300**

LOWER COURT or AGENCY and DOCKET NUMBER:
National Labor Relations Board - 04-CA-162385

NAME OF
JUDGE: **ALJ Mark Carissimi, Mark Gaston Pearce, Philip A. Miscimarra, Lauren McFerran.**

Specify who is suing whom, for what, and the subject of this action. Identify (1) the nature of the action; (2) the parties to this appeal; (3) the amount in controversy or other relief involved; and (4) the judgment or other action in the lower court or agency from which this action is taken:

This matter involves the a Complaint made by Robin Helms to the National Labor Relations Board. Ms. Helms alleges she was terminated in violation of the NLRA. Mid-Atlantic Restaurant Group countered that Ms. Helms was terminated due to her performance and other issues. The Parties to this appeal are Mid-Atlantic Restaurant Group and the NLRB. At issue is the relief ordered by the NLRB in its order, which is attached. The judgment that is at issue is the decision of the NLRB to uphold the decision of the ALJ despite Respondent's undeniable and extremely well-founded exceptions.

LIST and ATTACH a copy of each order, judgment, decision or opinion which is involved in this appeal. If the order(s) or opinion(s) being appealed adopt, affirm, or otherwise refer to the report and recommendation of a magistrate judge or the decision of a bankruptcy judge, the report and recommendation or decision shall also be attached.

The order of the NLRB is attached hereto as well as the original decision of the ALJ.

Provide a short statement of the factual and procedural background, which you consider important to this appeal:

Robin Helms made a complaint to the NLRB mere days before the limitations period expired in Fall of 2015. The NLRB decided to charge Petitioner despite Petitioner providing significant evidence that Robin Helms claims were bogus. A trial was held in March of 2016 in front of ALJ Mark Carissimi. At the trial, the NLRB presented nothing at all but the extremely suspect testimony of Robin Helms which strayed into areas that were not previously disclosed. Petitioner presented several witnesses and documents that showed Ms. Helms claims to be false, including several independent witnesses. In spite of this, ALJ Mark Carissimi wrongfully found in favor of Robin Helms. Petitioner submitted exceptions and brief of nearly 50 pages showing the significant problems with and errors in the ALJ's determination. The NLRB submitted a 2 page response with no citations or analysis of any kind. Again, in spite of everything, the NLRB upheld the ALJ's decision and Petitioner submitted the current Petition for Review.

Identify the issues to be raised on appeal:

Petitioner asserts that the ALJ, and subsequently the NLRB, erred in the following ways:

1. The process was rendered fundamentally unfair by General Counsel hiding what was at issue until the trial had commenced and adding additional persons and time periods that should have been excluded.
2. The ALJ and the NLRB considered several items outside the scope of the Complaint despite Petitioner's objections and the ALJ's own ruling that he would not consider them.
3. Despite credibility determinations typically being given deference, the ALJ and NLRB's willful blindness to the extreme credibility problems of Robin Helms and slavishly crediting everything that helped and discrediting everything that hurt her was an abandonment of their duties and error.
4. The ALJ and NLRB's finding of concerted activity in this matter was clear error and would render the language complete meaningless as virtually anything could be such if this case fits.
5. The ALJ and NLRB's findings that Robin Helms' termination was for impermissible reasons and that Petitioner's reason for termination were pretextual were error, completely against the great weight of the evidence, and impermissibly failed to consider the record the actual record.

Petitioner has asserted the above in concise and summary form and has attached their exceptions to the ALJ's determination, which more fully discuss the issues above.

This is to certify that this Concise Summary of the Case was electronically filed with the Clerk of the U.S. Court of Appeals for the Third Circuit and a copy hereof served to each party or their counsel of record

this 27th day of December, 2016.

/s/ Kent E. Conway

Signature of Counsel

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